POWER OF THE STATE TO REQUIRE WORK ON ROADS.—That a state has inherent power to require every able-bodied man within its jurisdiction to labor on public roads near his residence without direct compensation, has been well established by custom and precedent, but whether a state is justified in exacting a contribution of property for public service on the roads is a question which has only recently come before the courts. In *Galoway* v. *State,* (Tenn., 1918), 202 S. W. 76, a statute requiring any person who owned a wagon and team to contribute the same for road work for a few days, and also to provide the necessary feed for each team, was held constitutional as regards the furnishing of the wagon and team, but unconstitutional as regards the requisition of the feed. In the only other case to be found directly involving the compulsory use in road work of animals and implements, the court arrived at a conclusion directly in conflict with that reached in *Galoway* v. *State.* See *Toone* v. *State,* 178 Ala. 70; 42 L.R.A. (N.S.) 1045.

From the Colonial days to the present time conscripted labor has been much relied on for the construction and maintenance of roads, and legislation to that end has been upheld almost without question. *Butler* v. *Perry,* 240 U. S. 328; 36 Sup. Ct. 258; 60 L. Ed. 672; COOLEY, TAXATION, 1128. The right of a state to enact and enforce such legislation has been considered as referable either to the power of taxation or to the police power. The correct view would seem to be that, although the burden assumes the form of labor, it is, nevertheless, in its essential nature, taxation, and it must be levied on some principle of uniformity. *Short* v. *State,* 80 Md. 392; *Galloway* v. *Tavares,* 37 Fla. 58; *Hassett* v. *Walls,* 9 Nev. 387. Cases may be found which are apparently in conflict with the above view, the courts treating the requisition of labor as a regulation imposed under the police power similar in character to military service and jury duty, but in most of these cases the court could have called the burden taxation without impairing their decision in any way, simply holding that the work required was not a tax of the particular kind prohibited by the Constitution. Thus in *Pleasant* v. *Kost,* 29 Ill. 490, it was held that the assessment of labor was not a tax within the constitutional provision declaring that taxes levied for corporate purposes shall be uniform as to persons and property within the limits of such body; in *Johnson* v. *Macon,* 62 Ga. 645, that it is not a poll tax within the constitutional provision relating to poll taxes; in *State* v. *Sharp,* 125 N. C. 628; 34 S. E. 264; 74 Am. St. Rep. 663, that working the roads is not a tax within the meaning of a constitutional provision requiring taxes to be levied *ad valorem* on property. See also *State* v. *Wheeler,* 141 N. C. 773, 53 S. E. 358, 5 L. R. A. (N. S.) 1139 and note.

These statutes requiring labor on the roads usually provide that the laborers should bring with them such tools and implements as the overseer should request. The North Carolina statute is typical of this general class of statutes. See Sec. 2720, Revisal of 1905. It appears that during the early history of this country while slaves were regarded as property, statutes often required owners to send their slaves to work the roads. *Galoway* v. *State, supra, Toone* v. *State, supra.* In Blackstone's time the custom was

prevalent of requiring the use of teams along with personal services. BLACKSTONE, COMMENTARIES, Bk. 1, p. 358. Thus, in whichever light we view the conscription of wagons and teams, whether as a tax or as a duty owed the state, the correctness of the decision in *Galoway* v. *State, supra,* seems unquestionable. See also *Goddard, Petitioner,* 16 Pick. (Mass.), 504, 28 Am. Dec. 259. The right to make compulsory use of timber, gravel and other materials in road work, taken from land outside the limits of the highway, must be distinguished from the requisition of tools and animals. The former is purely an exercise of the power of eminent domain, an unequal burden falling upon those individuals whose property is taken, and compensation must be made for the materials taken. *Posey Township* v. *Senour,* 42 Ind. App. 580. See note 42 L. R. A. (N. S.) 1045.

The court in *Galoway* v. *State, supra,* has attempted to draw a distinction between exacting a contribution of the services of the wagon and horses and the appropriation of the feed, arguing that the former is merely an impressment for temporary service while the latter leaves nothing to be returned to the owner. The validity of this distinction is certainly open to question. The state can require a man's labor or the use of his tools and animals for a reasonable period, and this particular labor, and this particular use of his property during the period of service, are gone just as absolutely as any feed consumed by his horses. Further, if the burden imposed by the statute is considered in the nature of a tax, and it is submitted that it should be, there is absolutely no basis for declaring the appropriation of the feed unconstitutional. In the early days of our history, commodities were commonly received in payment of taxes, and at the present time the legislature may require taxes to be paid in money, labor or any other medium that it may see fit. *William's Case,* 3 Bland Ch. (Md.) 186, 255; *Libby* v. *Burnham,* 15 Mass. 144; *Lane County* v. *Oregon,* 7 Wall. 71; COOLEY, TAXATION, p. 15. J. W. T.

EFFECTIVENESS OF ORAL CONTRACTS, WITHIN THE STATUTE OF FRAUDS.—In *Morris* v. *Baron and Co.,* (House of Lords, 1917), 87 L. J. R. (K. B.) 145, plaintiff and defendant had entered into a contract of sale and plaintiff, as vendor, had delivered part of the goods agreed upon. Delivery of the remainder would have been a condition precedent to any recovery by the plaintiff. This contract, however, was followed by a second one, not in writing, whereby plaintiff was absolved from delivering the rest of the goods, but by which he agreed that he would deliver them if the defendant should so request. Thereafter plaintiff brought this action for the "price" of the goods delivered. The defendant set up, by way of counterclaim, plaintiff's failure to deliver the rest of the goods as requested under the second contract. The court held that the second contract, although not in writing, absolved the plaintiff from having to deliver all the goods under the first contract, and therefore allowed him to recover for the goods delivered, but that, because it was not in writing, the defendant could not maintain his counterclaim for breach of it.